Remarks

Claims 29 and 35 have been amended and new claims 37-55 added to recite more clearly Applicants elected invention. Support for claims 37-55 can be found throughout the specification and in the original claims.

Claim	Support in Specification
37-40	Original claims 23-24 and 35.
41-45	Page 37, line 12 to page 38, line 20.
46-47	Page 40, line 25 to page 41, line 28.
48	Page 15, line 25 to page 16, line 21.
49-52	Page 42, lines 1-21.
53-54	Page 44, line 18 to page 45, line 17.
55	Page 20, line 3 to page 21, line 6.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned Version with markings to show changes made.

Restriction Requirement Under 35 U.S.C. 121

In response to the Restriction Requirement, **Applicants hereby elect to prosecute the claims of Group I (claims 1-4, 16 and 32-36) with traverse**.

With regard to the traversal, Applicants note that the office action considers the inventions of Group I (claims 1-4, 16, 32-36) and Group XIII (claims 28-30) to lack the same or corresponding technical features because the claims of Group I are drawn to the polynucleotide of SEQ ID NO: 1, while the claims of Group XIII are allegedly drawn to a method of determining if a cell expresses aberrant cellular levels of the polypeptide of SEQ ID NO: 2. Applicants respectfully submit that the inventions of Groups I and XIII have the same or corresponding technical features. PCT Rule 13.2 defines the expression "special technical feature" to mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art. The special technical feature of the invention of Group I is nucleic acid molecules comprising the human $p70\beta^{S6k}$ gene. In the invention of Group XIII, determination of the level these nucleic acid molecules is necessary to measure the level of expression of $p70\beta^{S6k}$ in a cell sample. Further, it is pointed out that 37 C.F.R. 1.475(b)(2)

states:

"An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories: ... (2) A product and process of use of said product; or ..."

Group I is drawn to $p70\beta^{S6k}$ polynucleotide molecules, which are a product, and Group XIII is drawn to a method of using the these polynucleotide molecules or fragments thereof to determine the level of expression of human $p70\beta^{S6k}$ in cells. Furthermore, the $p70\beta^{S6k}$ nucleic acid molecules of Group I are required to practice the method in Group XIII. Thus, the inventions of Groups I and XIII are linked to form a single general inventive concept. Furthermore, Applicants submit that claims 41-54 are drawn to the invention of Group XIII (a method of determining if a cell expresses aberrant cellular levels of the polypeptide of SEQ ID NO: 2).

Conclusion

Except for issue fees payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application, including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **constructive petition for extension of time** in accordance with 37 C.F.R. 1.136(a)(3).

Respectfully submitted
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VERSION WITH MARKINGS TO SHOW CHANGES MADE

Claim 29 has been amended as follows:

29. (Once Amended) The method of claim 28, wherein the level of $p70\beta^{S6k}$ is determined by [~~finding~~] measuring the level of $p70\beta^{S6k}$ [~~RNA~~] nucleic acid in [~~a~~] the cell.

Claim 35 has been amended as follows:

35. (Once Amended) A vector comprising a nucleic acid encoding a $p70\beta^{S6k}$ [~~of claims 23 or 24~~] protein.